

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

SID CHILDRESS,

Plaintiff,

v.

JAMES STEVENS DEERING d/b/a
CENTRA XYZ, LLC,

Defendant.

Case No. _____

**(Former County of Santa Fe, First Judicial
District Court Case No. D-101-CV-2018-00808)**

NOTICE OF REMOVAL OF ACTION

Defendant JAMES STEVENS DEERING (“Defendant”), pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a), and 1446, with full reservation of all defenses, hereby removes this action from the First Judicial District, Santa Fe, New Mexico to the United States District Court for the District of New Mexico. In support of this Notice of Removal, Defendant states as follows:

Background

1. On March 14, 2018, an action was commenced by the filing of a Complaint for Violations of the Telephone Consumer Protection Act, the Unfair Practices Act and Torts in the County of Santa Fe, New Mexico, First Judicial District Court, entitled *Sid Childress v. James Stevens Deering d/b/a/ Centra XYZ, LLC*, as Case No. D-101-CV-2018-00808.

2. The suit arises from an unspecified number of alleged telephone calls to Plaintiff’s telephone allegedly placed by Defendant and/or that Plaintiff alleges violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”) and the New Mexico Unfair Practices Act, NMSA §§ 57-12-22 and 57-12-10.

3. The first date upon which Defendant received a copy of the said Complaint was April 12, 2018, when Defendant was served in California when copy was posted on his property.

4. Pursuant to the Summons accompanying the Complaint, Defendant must appear

in court in the First Judicial District on May 14, 2018.

5. Defendant now timely removes this action to this Court.

Basis for Jurisdiction

6. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. §§ 1331, 1367, and 1441(a). This claim could have been originally filed in this Court pursuant to 28 U.S.C. § 1331, as this Court has original jurisdiction over all civil actions arising under the “Constitution, laws, or treaties of the United States.”

7. Plaintiffs’ Complaint asserts violations of a federal law, namely the TCPA. *See generally* Ex. A. The Supreme Court of the United States in *Mims v. Arrow Financial Services LLC*, 132 S. Ct. 740, 747-53 (2012), addressed the issue of whether the federal district courts have jurisdiction over TCPA claims, holding that such a claim is, in fact, one that “arises under” the laws of the United States. As such, this Court has federal question jurisdiction over this matter.

8. Indeed, pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” Thus, this Court has federal question jurisdiction.

9. Based upon the foregoing, this Court has federal question jurisdiction over this action and venue is proper in this Court.

10. The Court also has supplemental jurisdiction over any claim under the New Mexico Unfair Practices Act pursuant to 28 U.S.C. § 1367, as any such claim is so related to the TCPA claim over which the Court has original jurisdiction that it forms part of the same case or controversy under Article III of the United States Constitution.

Notice Given

11. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be promptly served on Plaintiff, and a copy will be promptly filed with the Clerk of the First Judicial District, Santa Fe, New Mexico.

Removal is Timely Filed

12. This Notice has been timely filed within thirty (30) days of Defendant's receipt of a copy of the filed Complaint on April 12, 2018, as required by 28 U.S.C. § 1446(b)(2).

Pleadings and Process

13. As required by 28 U.S.C. § 1446(a), copies of all state court process and pleadings served upon Defendant are attached to this Notice of Removal as Exhibit A.

14. In accordance with Local Rule 81.1(a), copies of all records and proceedings from the state court action shall be filed within twenty-eight (28) days after the filing of this Notice of Removal.

Venue

15. Pursuant to 28 U.S.C. § 1441(a), venue in this District Court is proper for purposes of removal because this action is currently pending in the First Judicial District, Santa Fe, New Mexico, which is in the same District as the United States District Court for the District of New Mexico.

Non-Waiver of Defenses

16. Nothing in this Notice shall be interpreted as a waiver or relinquishment of Defendant's rights to assert any defense or affirmative matter, including, without limitation, motions to dismiss pursuant to Federal Rule of Civil Procedure 12.

ACCORDINGLY, pursuant to 28 U.S.C. §§ 1331, 1367, 441(a), and 1446, this Court has jurisdiction over this matter, and Defendant James Stevens Deering hereby removes this action from the First Judicial District, Santa Fe, New Mexico, to this Court.

DATED: May 14, 2018

MALDEGEN, TEMPLEMAN & INDALL, LLP

By: /s/ Michael J. Moffett

Michael J. Moffett

mmoffett@cmtisantafe.com

141 East Palace Avenue

Santa Fe, New Mexico 87504-0669

Telephone: (505) 982-4611

Facsimile: (505) 988-2987

*Attorneys for Defendant JAMES STEVENS
DEERING*

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2018, a true and correct copy of the foregoing *Notice of Removal* was served on counsel of record via email and through the Court's CM/ECF System.

/s/ Michael J. Moffett

Michael J. Moffett